

HOUSE BILL REPORT

SSB 5204

As Reported by House Committee On:
Early Learning & Human Services
Ways & Means

Title: An act relating to juveniles who have been adjudicated of a sex offense.

Brief Description: Concerning juveniles who have been adjudicated of a sex offense.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Regala, Hargrove and Stevens).

Brief History:

Committee Activity:

Early Learning & Human Services: 3/17/11, 3/24/11 [DPA];
Ways & Means: 3/31/11 [DPA(WAYS w/o ELHS)].

**Brief Summary of Substitute Bill
(As Amended by House)**

- Provides that offenders required to register for a sex offense or kidnapping offense, except those who have committed a class A felony at the age of 15 or older, may petition the court to be relieved of the duty to register two years after completion of adjudication and confinement and upon meeting all other statutory requirements.
- Creates a uniform burden of proof for individuals who petition the court for relief from the duty to register as a sex offender for offenses committed as a juvenile.
- Allows records for juvenile sex offenses to be sealed where a person convicted of a juvenile sex offense has been relieved of the duty to register and the person has complied with all other statutory requirements.
- Requires case-by-case risk assessments of sex offenders being released from confinement and those accepted for supervision from another state under the Interstate Corrections Compact.

HOUSE COMMITTEE ON EARLY LEARNING & HUMAN SERVICES

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: Do pass as amended. Signed by 7 members: Representatives Kagi, Chair; Walsh, Ranking Minority Member; Hope, Assistant Ranking Minority Member; Dickerson, Goodman, Johnson and Orwall.

Minority Report: Do not pass. Signed by 2 members: Representatives Roberts, Vice Chair; Overstreet.

Staff: Linda Merelle (786-7092).

Background:

Sex Offenses Requiring Registration.

Under the registration provisions, a person must register if he or she has been convicted of a sex or kidnapping offense. The definition of a "sex offense" under the sex offender registration provisions is broader than the definition under the Sentencing Reform Act, which only applies to adults. For the purpose of registration, a sex offense is defined as:

- any offense defined as a sex offense under the Sentencing Reform Act (only felony offenses, including felony offenses with a finding of sexual motivation);
- Failure to Register, where the offender has at least one prior offense for Failure to Register;
- Sexual Misconduct with a Minor in the second degree (gross misdemeanor);
- Communication with a Minor for Immoral Purposes (felony or gross misdemeanor);
- any federal or out-of-state conviction for an offense that under the laws of Washington would be classified as a sex offense under the offender registration provisions; or
- any gross misdemeanor under the anticipatory offenses such as attempt, solicitation, or conspiracy.

A kidnapping offense is defined as follows, where the victim is a minor and the offender is not the minor's parent:

- Kidnapping in the first or second degree;
- Unlawful Imprisonment;
- any anticipatory offenses for Kidnapping or Unlawful Imprisonment; or
- any federal or out-of-state conviction for an offense that under the laws of Washington would be classified as a kidnapping offense.

Relief from Registration.

A person who committed his or her offense as a juvenile may petition the court to be relieved from the duty to register if at least 24 months have passed since the adjudication for the offense giving rise to the duty to register, and the petitioner has not been adjudicated of any additional sex or kidnapping offenses or the offense of Failure to Register.

If the petitioner was age 15 or older at the time of the offense, he or she must show sufficient rehabilitation by clear and convincing evidence. If the offender was under the age of 15, he or she must show sufficient rehabilitation by a preponderance of the evidence. In making its

determination of whether there is sufficient rehabilitation, the court may consider the following factors:

- the nature of the offense, including the number of victims and length of the offense history;
- any subsequent criminal history;
- the petitioner's compliance with supervision requirements;
- the length of time since the charged incident(s) occurred;
- any input from community corrections officers, law enforcement, or treatment providers;
- participation in sex offender treatment;
- participation in other treatment and rehabilitative programs;
- the offender's stability in employment and housing;
- the offender's community and personal support system;
- any risk assessments or evaluations prepared by a qualified professional;
- any updated polygraph examination;
- any input from the victim; and
- any other factors deemed relevant by the court.

Sealing Juvenile Records.

The "official juvenile court file" is the legal file of the juvenile court containing petitions, information, motions, memorandums, briefs, findings of the court, and court orders. The "social file" is the juvenile court file which contains the records and reports of a probation counselor. Juvenile records are a combination of the official juvenile court file, the social file, and the records of any other juvenile justice or care agency regarding a particular case.

In order to request that his or her juvenile records be sealed, a person must file a motion with the superior court. Courts do not have the authority to issue an order sealing the record of an adjudication for a sex offense. The court does have discretion to order sealed the following records:

- class A offenses where the person has spent five consecutive years since the last date of release from confinement, full-time residential treatment, or entry of disposition in the community without being convicted of any offense or crime; and
- class B, class C, gross misdemeanor, and misdemeanor offenses and diversions where the person has spent two consecutive years since the last date of release from confinement, full-time residential treatment, or entry of disposition in the community without being convicted of any offense or crime.

In addition, the court cannot order juvenile records sealed if there is a proceeding pending against the moving party seeking his or her conviction for a juvenile or criminal offense or a proceeding pending seeking the formation of a diversion agreement with that person, and if full restitution has not been paid.

If the court grants the motion to seal, the order to seal covers the juvenile court file, the social file, and other records relating to the case as are named in the order. The order to seal means the proceedings in the case can be treated as though they never occurred and the subject of the records may reply accordingly to any inquiry about the events contained in the record.

Summary of Amended Bill:

Being Relieved of the Duty to Register as a Sex or Kidnapping Offender.

An offender who has the duty to register for a sex or kidnapping offense committed as a juvenile, and whose offense was not a class A felony committed at age 15 or older, may petition the court to be relieved of the duty to register 24 months after adjudication and being released from confinement.

The difference in the burden of proof for offenders who committed their offenses as juveniles is eliminated. The burden of proof for a sex or kidnapping offense committed by a juvenile, for which a person may petition the court for relief from the duty to register, is the preponderance of the evidence.

Sealing Records for Juvenile Sex Offenses.

A person who was convicted of a sex offense as a juvenile and who has been relieved of the duty to register may petition the court to seal his or her records if the conviction was not for Rape in the first or second degree, or Indecent Liberties with Forcible Compulsion. All of the other statutory criteria for sealing records, such as full payment of restitution, must also be met.

Risk Assessment at Time of Release from Confinement.

The End-of-Sentence Review Committee established by the Department of Corrections must, on a case-by-case basis, assess the risk of sex offenders being released from confinement and those accepted from another state under a reciprocal agreement under the Interstate Corrections Compact for adults and for juveniles.

School Policy for Students Required to Register.

The Superintendent of Public Instruction must publish a revised and updated sample policy for schools to follow regarding students who are required to register as sex or kidnapping offenders. When funded, each school district must develop and adopt a written policy or amend and adopt the sample policy published on the website of the Office of Superintendent of Public Instruction. Each school that enrolls a student who is required to register as a sex or kidnapping offender must designate a primary contact person for those students. The designated primary contact person must be able to recognize high risk situations or factors that may indicate that a student may have difficulty controlling his or her behavior.

Amended Bill Compared to Substitute Bill:

The amended bill excludes persons whose juvenile sex or kidnapping offenses were class A felonies and were committed at age 15 or older from petitioning the court for relief from the duty to register two years after adjudication and confinement.

It adds provisions requiring the Superintendent of Public Instruction to publish a revised and updated sample policy, requiring each school district to adopt a written policy or amend and adopt the sample policy posted by the Superintendent of Public Instruction, and requiring schools where students required to register are enrolled to designate a primary contact person.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 7 and 8, relating to publishing and adoption of school district policies for students required to register as sex or kidnapping offenders and the designation of a primary contact person in schools where students required to register are enrolled, which take effect September 1, 2011.

Staff Summary of Public Testimony:

(In support) Juveniles are distinctly different from adults who commit sex offenses. Recidivism is low, and they respond to treatment. The risk assessment is for those juveniles who are being released in the community. The goal is to allow offenders to be successful in the community. This bill addresses the issue of a victim-centered approach and community safety. It is important to note that there are checks and balances in place. A petition to be relieved of the duty to register as a sex offender generally involves a recommendation from the provider, a polygraph, and a hearing. Kids in their young adult lives cannot rent apartments or get employment. Because they do not have ways to make a stable lifestyle as an adult, the risk to reoffend is increased. Those required to register as sex offenders are constantly denied the ability to find a home and denied friends. If the offense for which a person must register is a class A offense, the person must register as a sex offender for life. Making the burden of proof the same for all petitioners to be relieved of the duty to register allows juveniles to turn their lives around.

(Opposed) None.

Persons Testifying: Senator Regala, prime sponsor; Kecia Rongen, Sex Offender Policy Board; Andrea Piper, Washington Coalition of Sexual Assault Programs; Dan Knoepfler, Washington Association for the Treatment of Sexual Abusers; and Travis Gann, CFC Washington.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended by Committee on Ways & Means and without amendment by Committee on Early Learning & Human Services. Signed by 16 members: Representatives Hunter, Chair; Darneille, Vice Chair; Hasegawa, Vice Chair; Carlyle, Cody,

Dickerson, Haigh, Hudgins, Hunt, Kagi, Kenney, Ormsby, Pettigrew, Seaquist, Springer and Sullivan.

Minority Report: Do not pass. Signed by 11 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Chandler, Haler, Hinkle, Parker, Ross, Schmick and Wilcox.

Staff: Amy Skei (786-7109).

Summary of Recommendation of Committee On Ways & Means Compared to Recommendation of Committee On Early Learning & Human Services:

The amendment recommended by the Ways and Means Committee removed the requirement that each school district adopt a written policy to ensure staff and student safety at schools attended by a student required to register as a sex or kidnapping offender. The amendment also removes the requirement that schools designate a primary contact person regarding students enrolled at the school who must register as a sex or kidnapping offender.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on April 1, 2011.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) None.

(Opposed) None.

Persons Testifying: None.

Persons Signed In To Testify But Not Testifying: None.